

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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TANISE HILL,

Plaintiff(s),

v.

LEUL ABRAHAM TEKLE, et al.,

Defendant(s).

Case No. 2:21-CV-371 JCM (EJY)

ORDER

Presently before the court is plaintiff Tanise Hill's motion to remand. (ECF No. 6). Defendants Leul Tekle and Meron Enterprises, Inc. filed a response (ECF No. 8), to which plaintiff replied, (ECF No. 10).

I. Background

The instant action arises from a car accident. (ECF No. 1). Plaintiff filed her complaint in the Eighth Judicial District Court of Clark County, alleging negligence, and negligent hiring, training, supervision and retention. (*Id.*). On March 4, 2021, defendant removed this action to this court based on diversity jurisdiction. (*Id.*).

On March 26, 2021, plaintiff filed the instant motion, arguing that defendant failed to timely remove. (ECF No. 6).

II. Legal Standard

“Federal courts are courts of limited jurisdiction,’ possessing ‘only that power authorized by Constitution and statute.’” *Gunn v. Minton*, 568 U.S. 251, 256 (2013) (quoting *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994)). Pursuant to 28 U.S.C. § 1441(a), “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to

1 the district court of the United States for the district and division embracing the place where such
2 action is pending.” 28 U.S.C. § 1441(a).

3 Because the court’s jurisdiction is limited by the constitution and 28 U.S.C. §§ 1331,
4 1332, “[t]he threshold requirement for removal under 28 U.S.C. § 1441 is a finding that the
5 complaint contains a cause of action that is within the original jurisdiction of the district
6 court.” *Ansley v. Ameriquest Mortg. Co.*, 340 F.3d 858, 861 (9th Cir. 2003) (quoting *Toumajian*
7 *v. Frailey*, 135 F.3d 648, 653 (9th Cir. 1998)). Thus, “it is to be presumed that a cause lies
8 outside the limited jurisdiction of the federal courts and the burden of establishing the contrary
9 rests upon the party asserting jurisdiction.” *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042
10 (9th Cir. 2009).

11 Upon notice of removability, a defendant has thirty days to remove a case to federal court
12 once he knows or should have known that the case was removable. *Durham v. Lockheed Martin*
13 *Corp.*, 445 F.3d 1247, 1250 (9th Cir. 2006) (citing 28 U.S.C. § 1446(b)(2)). Defendants are not
14 charged with notice of removability “until they’ve received a paper that gives them enough
15 information to remove.” *Id.* at 1251.

16 Specifically, “the ‘thirty day time period [for removal] . . . starts to run from defendant’s
17 receipt of the initial pleading only when that pleading affirmatively reveals on its face’ the facts
18 necessary for federal court jurisdiction.” *Id.* at 1250 (quoting *Harris v. Bankers Life & Casualty*
19 *Co.*, 425 F.3d 689, 690–91 (9th Cir. 2005) (alterations in original)). “Otherwise, the thirty-day
20 clock doesn’t begin ticking until a defendant receives ‘a copy of an amended pleading, motion,
21 order or other paper’ from which it can determine that the case is removable.” *Id.* (quoting 28
22 U.S.C. § 1446(b)(3)).

23 A plaintiff may challenge removal by timely filing a motion to remand. 28 U.S.C.
24 § 1447(c). On a motion to remand, the removing defendant must overcome the “strong
25 presumption against removal jurisdiction” and establish that removal is proper. *Hunter*, 582 F.3d
26 at 1042 (quoting *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir.1992) (per curiam)). Due to this
27 strong presumption against removal jurisdiction, the court resolves all ambiguity in favor of
28 remand to state court. *Id.*

1 **III. Discussion**

2 Plaintiff moves to remand due to defendants' failure to remove this matter within thirty
3 days of service. (ECF No. 6); *see* 28 U.S.C. § 1446(b); *Harris v. Bankers Life and Cas. Co.*, 425
4 F.3d 689, 694 (9th Cir. 2005).

5 “[N]otice of removability under § 1446(b) is determined through examination of the
6 four corners of the applicable pleadings, not through subjective knowledge or a duty to make
7 further inquiry.” *Harris*, 425 F.3d at 694. “Removal and subject matter jurisdiction statutes are
8 strictly construed, and a defendant seeking removal has the burden to establish that removal is
9 proper and any doubt is resolved against removability.” *Hawaii ex rel. Louie v. HSBC Bank*
10 *Nev., N.A.*, 761 F.3d 1027, 1034 (9th Cir. 2014). NRS § 14.070 permits substitute service to a
11 statutory agent employed by the state when a defendant happens to be a non-resident of that
12 state. NRS §14.070.

13 Here, both defendants filed notice of removal long after service was effectuated. (ECF
14 No. 1). Without authority, defendants invoke the notion that the “retention [of] defense counsel”
15 was “the actual event causing 28 USCS §1446(b) 30-day removal period to begin to run, if any.”
16 (*Id.*). As to their other points, defendants cite a slew of caselaw from other jurisdictions to argue
17 that service was not effectuated. (ECF No. 8).

18 However, these citations are contradicted by established Nevada law: plaintiff need not
19 produce evidence of actual receipt of service; “risk of nondelivery must fall upon the
20 defendant.” *Mitchell v. Second Jud. Dist. Ct.*, 418 P.2d 994, 997 (Nev. 1966).

21 This court finds that defendants failed to timely remove this matter. Thus, remand is
22 appropriate. (ECF No. 6).

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1 **IV. Conclusion**

2 Accordingly,

3 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that plaintiff's motion to
4 remand (ECF No. 6) be, and the same hereby is, GRANTED.

5 DATED April 23, 2021.

6 
7 UNITED STATES DISTRICT JUDGE